with an intent to kill; that is an intent to kill someone." Quoted with approval from *Mathis* v. *State*, 39 Tex. Cr. App. 549. In charging an assault with intent to kill, where by statute a specific intent is made a part of the crime, undoubtedly that intent must be proved. Under such a statute A, intending to shoot B, but accidentally shooting C, cannot properly be convicted of an assault on C with intent to kill C. *State* v. *Mulhall*, 199 Mo. 202; *People* v. *Keefer*, 18 Cal. 637; Ann. Cas. 1912A, 1063, note; *contra, Callahan* v. *State*, 21 Ohio St. 306. Cases in which A shoots at C, supposing him to be B, should be distinguished, for here there is a specific intent to kill the person assaulted. *McGehee* v. *State*, 62 Miss. 772; *People* v. *Torres*, 38 Cal. 141. But where, as in the principal case, the statute by its terms makes criminal an assault with intent to kill, and does not expressly restrict the intent to kill to the person assaulted, A, intending to shoot B, but accidentally wounding C, may be convicted of an assault on C with intent to kill. *Mathis* v. *State, supra*, 37 L. R. A. (n. s.) 172, note. The indictment in the principal case transcends the statutory requirement and restricts the intent to the person assaulted, and therefore, on principle, it would seem that an intent to kill the person injured is of the essence of the crime charged and should be proved. *State* v. *Shanley*, 20 S. D. 18. In view of the indictment, the effect of the court's decision is to treat the restrictive allegation as mere surplusage.

CRIMINAL LAW—EVIDENCE OF OTHER OFFENSES SHOWING SYSTEM.—In a prosecution for larceny of a brooch, evidence was offered that the witness who had pawned this brooch for the defendant had similarly pawned other jewelry for him. There was no evidence as to where the defendant had obtained such other jewelry except some articles which, it appears, had been taken from the store from which the defendant was accused of taking the brooch, though in effect the defendant admitted that all the jewelry was stolen. The evidence of pawning the other jewelry for the defendant was *held* admissible to show a system under which his operations were conducted. *McClelland* v. *State* (Md. 1921), 114 Atl. 584.

One of the exceptions to the rule excluding proof of extraneous crimes is when the other acts are so connected by common features as to indicate a plan. I WIGMORE ON EVIDENCE, §346. But "there must be such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are individual manifestations." *ibid.*, §304. A person who commits one crime may be more likely to commit another, yet, logically, one crime does not prove another and cannot be shown, unless there is a certain relation existing between them. *Jaynes* v. *People*, 44 Colo. 535. Disagreement as to whether such relation exists, and the confusing of evidence of system with evidence to show intent, motive, absence of mistake, and identity, has caused a seeming conflict in the decisions. See *People* v. *Molineux*, 168 N. Y. 264, 62 L. R. A. 193; *State* v. *Gillies*, 40 Utah 541, 43 L. R. A. (n. s.) 776. Evidence of other crimes tends to confuse the defendant in his defense, raise a variety of issues, and be highly prejudicial to him. *Com.* v. *Jackson*, 132 Mass. 16; *State* v. *Hyde*,

234 Mo. 200. Due to this fact, the test of relevancy of evidence to prove system should be rigidly adhered to and that part of the principal case here noted does not seem to comply with the test above quoted. Disposal of other stolen jewelry does not seem to show a plan pursuant to which the brooch in question was taken, the two acts appear quite unconnected, with no concurrence of common features, and the holding seems doubtful in the application of the law to the particular facts as stated in the opinion.

DEATH BY WRONGFUL ACT—ACTION FOR BENEFIT OF RELATIVES OF DECEASED NOT MAINTAINABLE AGAINST WRONGDOER'S ADMINISTRATOR.—D's intestate shot and killed P's wife. Shortly afterwards the former died. P now sues D, as administrator, under a statute, which follows Lord Campbell's Act, conferring on relatives of deceased persons a right of action for wrongful death. *Held,* action cannot be maintained against administrator after death of wrongdoer. *Demezuk* v. *Jenifer* (Md., 1921), 114 Atl. 471.

It is a familiar rule of common law that personal actions die with the person. Statutes authorizing a right of action for wrongful death for the benefit of relatives of deceased, being in derogation of common law, are construed strictly. Where they follow the language of Lord Campbell's Act the decisions in the various states are unanimously in accord with the principal case, whether the action be commenced originally against the wrongdoer's administrator. *Clark* v. *Goodwin,* 170 Cal. 527, L. R. A. 1916A, 1142; *Hamilton* v. *Jones,* 125 Ind. 176; *Carrigan* v. *Cole,* 35 R. I. 162; or is sought to be revived against him, the wrongdoer having died after action brought and before judgment. *Bates* v. *Sylvester,* 205 Mo. 403, 11 L. R. A. (n. s.) 1157; *Kranz* v. *Wisconsin Trust Co.,* 155 Wis. 40, Ann. Cases 1915C, 1050. However, the action against the wrongdoer's administrator is upheld in a number of states, generally not by virtue of the statute conferring the right of action on the relatives of the deceased person, but by authority of some other statute expressly providing for the survival of personal injury actions. *Devine* v. *Healy,* 241 Ill. 34; *Morehead's Admr.* v. *Bittner,* 106 Ky. 523. Such statutes, when remedial in character, should be construed liberally. *Hackensack Trust Co.* v. *Vanden Berg,* 88 N. J. Law 518. A statute providing that no action except suits for penalties and for *damages merely vindictive* shall abate by the death of either party has been construed to extend the remedy under a Death Act against the representative of a deceased wrongdoer. The recovery for benefit of relatives of deceased is for the pecuniary injury to them alone, and the action cannot be considered as a punishment for the defendant. *Collier* v. *Arrington,* 61 N. C. 356. But see *Davis* v. *Nichols,* 54 Ark. 358, where an earlier statute providing for the survival of actions *ex delicto* by and against the representatives of both parties was held not to extend the remedy, under a later statute following Lord Campbell's Act, against the administrator, the wrongdoer having died pending suit. It was held that the earlier statute applied only to prevent subsisting causes of action from abating, whereas the action for benefit of relatives was a new cause of action which the death originates. The statute on this subject in Texas expressly provides that, if the defendant die pend-